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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the 2001-2002
Administrative Review of Tapered Roller Bearings and Parts
Thereof, Finished and Unfinished, from the People's Republic of
China; Final Results

Summary

We have analyzed the briefs and rebuttal briefs of interested parties in the 2001-2002 administrative review of the antidumping duty order covering tapered roller bearings and parts thereof, finished and unfinished ("TRBs" or "subject merchandise"), from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties:

- Comment 1: Peer Bearing Company - Changshan's ("CPZ") Market Economy Steel
- Comment 2: Valuing the Steel Input Used by CPZ to Manufacture Cups and Cones
- Comment 3: Cups and Cones Surrogate Value: Japanese Exports to India Versus to Indonesia
- Comment 4: Correct the Surrogate Value Calculated Using Japanese Exports to India
- Comment 5: Financial Ratios: HMT's Financial Records and Calculate Using a Simple Average
- Comment 6: Discontinue Excluding Negative Dumping Margins
- Comment 7: Amelioration of the Anomalous Situation Arising from the Petitioner Owning 100% of Yantai Timken Company ("Yantai Timken")

- Comment 8: Yantai Timken Reported Steel Values Clerical Error
Comment 9: Yantai Timken Packing Values Clerical Error
Comment 10: Yantai Timken Part-Specific Costs

Background

On February 14, 2003, the Department of Commerce (“the Department”) published the preliminary results and partial rescission of this administrative review of TRBs from the PRC. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Preliminary Results of 2000-2001 Administrative Review and Partial Rescission of Review, 68 FR 7500 (February 14, 2003) (“Preliminary Results”). The period of review (“POR”) is June 1, 2001, through May 31, 2002. We invited parties to comment on the Preliminary Results. We received comments from CPZ, Yantai Timken, and the Timken Company (“the petitioner”).

Discussion of Issues

Comment 1: Peer Bearing Company - Changshan’s (“CPZ”) Market Economy Steel

Respondent’s Argument: CPZ disagrees with the Department’s decision to reject the market prices CPZ paid to a market economy supplier. CPZ notes that the Department relied on the same rationale used in the three previous TRB administrative reviews where the Department rejected market economy prices from suppliers in the same market economy country because the Department found a reasonable basis to believe or suspect that those prices were distorted due to subsidization. According to CPZ, this rationale was rejected by the Court of International Trade (“CIT”) for TRBs XIII in China National Machinery Import & Export Corporation v. United States, No. 01-01114, slip op. 03-16 (CIT Feb. 13, 2003) (“China National”). CPZ argues that the record in this current administrative review also does not support the Department’s rationale.

CPZ contends that the Department has not explained how CPZ’s market supplier could have benefitted from any of the subsidy programs that the Department identified in the Market Economy Steel Memo¹ or how the alleged subsidies have caused a distortion to CPZ’s supplier’s prices. According to CPZ, there is no evidence, specific or otherwise, linking CPZ’s supplier or the steel input in question to any of the subsidies referenced by the Department. Therefore, CPZ argues that there is no reason for the Department to believe or suspect that the supplier’s prices may be subsidized.

¹Memorandum to the File, AMarket Economy Steel Memo, dated February 7, 2003 (incorporating from TRBs XII the proprietary Memorandum to Richard W. Moreland regarding Allegation of Unfair Steel Prices, dated January 3, 2001) (AMarket Economy Steel Memo).

In support of its position, CPZ states that the record from the most-recently concluded countervailing duty investigation of steel products from CPZ's supplier country shows that the generally available export subsidies the Department relied on to reject CPZ's market economy supplier's prices were terminated and the residual benefits are *de minimis*. As the country in question notified the WTO of these terminations, pursuant to Article 8.3 of the WTO Subsidies Agreement, it is CPZ's opinion that the Department cannot rely upon these export subsidy programs as a basis to believe or suspect that CPZ's supplier's prices may be subsidized. Moreover, CPZ argues that in the most-recently concluded CVD investigation involving the country of CPZ's market supplier, the "preponderance of the subsidies . . . found to be countervailable are related to one export subsidy program while the other programs, when viewed individually, were found to be *de minimis*. Hence, CPZ contends that because CPZ's supplier did not participate in the one export subsidy program with a countervailable margin above *de minimis*, if CPZ's supplier were investigated, its margin likely would have been zero or *de minimis*.

CPZ contends that the courts have ruled that in determining whether there is a reasonable basis to believe or suspect, "particularized evidence is the touchstone." See CPZ's Case Brief at page 16 citing to Al Tech Specialty Steel Cop. v. United States, 575 F. Supp. 1277 (CIT 1983). CPZ argues that the Department has no "particularized evidence" that CPZ's market supplier benefitted from export subsidies. Rather, according to CPZ, the only particularized evidence on the record is its market supplier's statement that it does not produce the merchandise that was subject to CVD orders and that the supplier has not received any subsidies or benefits from its government. As such, CPZ argues that this certification from its supplier is the only particularized evidence about the supplier and should overcome any suspicion that CPZ's supplier's prices may have been subsidized.

CPZ concludes that its submissions in this review reflect that its steel supplier and the type of steel it produced and sold to CPZ were never investigated, and, if the supplier had been investigated, its margin would not have been greater than *de minimis*. Thus, CPZ argues that there is no reason for the Department to believe or suspect that CPZ's supplier's prices may be subsidized, with the result that the Department must use CPZ's supplier's prices in calculating normal value for CPZ pursuant to 19 CFR 351.408(c)(1).

Petitioner's Argument: The petitioner notes that while CPZ relies on the CIT's position in China National to challenge the Department's rationale for rejecting CPZ's market economy prices, the CIT's decision is not final and the Department's rationale may ultimately be upheld by the CIT. The petitioner further notes that in China National the CIT "expressly acknowledged" the Department's authority to reject market prices when the Department has reason to believe or suspect that the inputs in question were subsidized or dumped. Moreover, the petitioner argues that the Department just recently reaffirmed its position in Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10865 (March 6, 2003). As Ball Bearings was issued after China National, the petitioner argues that it indicates the Department is firmly standing by its position.

The petitioner contends that the current review is distinguishable from China National because the petitioner placed evidence on the record that corroborates the Department's decision to reject CPZ's market economy purchases. The evidence is 2000-2002 Chinese import statistics for steel products under Harmonized Schedule ("HS") 7228.30, "other alloy steel," *i.e.*, steel usable for cups and cones, that shows that, on average, Chinese imports from the country in question had U.S. dollar per kilogram values among the lowest of any country exporting to the PRC. The petitioner claims that this suggests that there is unfair pricing from CPZ's supplier country which supports a suspicion or belief that the steel products purchased by CPZ were subsidized.

The petitioner further reasons that the CIT's decision in China National is problematic and would very likely fail on appeal if the CIT affirms the Department's remand redetermination. The petitioner notes that the CIT finds fault with the Department's exercise of discretion and in effect substitutes its own judgment. According to the petitioner, the Department followed the statutory scheme when it assigned Indian surrogate values to CPZ's imported steel. The petitioner argues that the use of market prices for inputs is a practice that the Department developed and the Federal Circuit sustained. The petitioner further notes that the Department codified this practice as its "so-called 'normal' method, but 'normally' clearly contemplates exceptions." *See* Petitioner's Rebuttal Brief at page 8. Thus, the petitioner argues that the CIT overstepped its role and in effect substituted its judgment for the Department's.

According to the petitioner, the CIT also infused an unreasonable showing into the believe or suspect standard. The petitioner argues that the CIT's finding that the Department must have particular, specific, and objective evidence before disregarding actual prices was drawn from a case involving the requirements to establish a sales-below-cost investigation. The petitioner contends that such a high standard is practical in establishing a sales-below-cost allegation because in those situations the petitioner normally has full access to a respondent's body of sales and cost data. However, this is not the case in regard to market economy suppliers that are not participants in the review. The petitioner further contends that the only way to get specific information would be to investigate the market supplier, which the legislative history expressly states the Department need not do before rejecting values. Therefore, the petitioner argues that what is reasonable to justify suspicion or belief must be a relative standard that applies differently in different situations.

The petitioner also contends that the CIT "demonstrably" confuses the level of evidence required to support a conclusion of suspicion or belief. According to the petitioner, evidence that such facts might exist as apparent to a reasonable mind are sufficient to support a conclusion of suspicion or belief. The petitioner argues that official findings of subsidy programs in particular exporting countries reasonably allow for such a conclusion. The petitioner states that "the Court's apparent confusion here does violence to express legislative intent." *See* Petitioner's Rebuttal Brief at page 10. Furthermore, the petitioner alleges that if the CIT's decision is made final it would negatively affect other aspects of antidumping and countervailing duty proceedings.

Department's Position: Since CPZ submitted its case brief, the Department filed its redetermination on remand in the administrative review underlying China National and that redetermination was sustained. Thus, the CIT has upheld the Department's approach to substituting surrogate values for market economy prices paid to market economy suppliers where the facts of record are sufficient to support a reason to believe or suspect that those actual prices are distorted due to subsidization. See China National Machinery Import & Export Corporation v. United States, No. 01-01114, slip op. 03-1333 (CIT Oct. 15, 2003) ("China National II") at page 10. The CIT also ruled in the Department's favor on this issue in Luoyang Bearing Factory v. United States, No. 99-12-00743, slip op. 03-141 (CIT Oct. 27, 2003) ("Luoyang Bearing II"). Importantly, in Luoyang Bearing II the CIT found that "since {the Department} had information that the subsidies were not specific to a particular product or type of steel, {the Department} made a logical inference supported by substantial evidence that {the Department} had reason to believe or suspect that the steel purchased by the PRC trading company was subsidized." See Luoyang Bearing II at page 10.

Furthermore, we disagree with CPZ's argument that recent CVD cases involving the market-economy country under question have altered the evidence in support of the Department's position. These cases provide no further evidence that the subsidies at issue ceased to be available to CPZ's market economy steel supplier during the POR. In fact, the findings of the CVD cases referenced by CPZ were in the affirmative, demonstrating that subsidies were still available to steel producers in the country in question and countervailable in accordance with U.S. trade law. As noted in the Department's redetermination pursuant to the CIT's remand in China National (dated May 13, 2003) ("Redetermination"):

"Unless a particular market supplier has been found to have *de minimis* subsidy benefits, as was the situation with [], the specific level of subsidization is not a relevant consideration in the Department's analysis of whether there is reason to believe or suspect that prices may be subsidized. This is in accordance with the legislative history, which established that the Department base its decision on information generally available to it at the time of its determination.² As noted previously, the legislative history makes clear its intention is not to mandate the conduct of a formal investigation by the Department in examining the existence of subsidies, which would be the only way to establish a particular company's rate."

Redetermination at 15. This position was sustained in China National II, where the CIT noted that the results of the Redetermination were "sufficient in that {the Department} further explains the exporting country's subsidy programs, and why one negative countervailing duty determination is immaterial to CMC's case." See China National II at page 9. In addition, the CIT found that the Department sufficiently explained why it could not determine CMC's particular subsidy level short of a formal investigation. See China National II at page 9.

²See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988).

We do not agree with CPZ's argument that the only particularized evidence on the record is CPZ's market supplier's statements that the company does not produce the merchandise that was subject to CVD orders, that it did not benefit from the program that accounted for the vast preponderance of the countervailable benefits, and that the supplier has not received any subsidies or benefits from its government in connection with the production of the steel input supplied to CPZ. The market supplier's statements do not overcome the presumption that the inputs in question may be subsidized. The Department has information that there were subsidies available in the market economy country in question that were not specific to a particular product or type of steel. Therefore, the Department has reason to believe or suspect that the steel purchased by the PRC trading company was subsidized.

Therefore, we are continuing to use a surrogate source to value the steel inputs used by CPZ to manufacture the subject merchandise.

Comment 2: Valuing the Steel Input Used by CPZ to Manufacture Cups and Cones

Respondent's Argument: CPZ notes that some of the merchandise sold within the current POR originally was manufactured and entered the United States during the period of review covered by CPZ's New Shipper Review. This merchandise was held in inventory until being sold within the current review period. Consequently, CPZ argues that, if the Department continues to reject the price CPZ paid to its market economy supplier, the Department should calculate the normal value for these sales using the surrogate value for bar steel from CPZ's New Shipper Review instead of the surrogate value calculated in the current review. According to CPZ, the Department verified the factors of production for that shipment and these costs reflect the costs actually incurred in the production of TRBs for the sale at issue.

CPZ argues that "in the {Preliminary Results} the Department used a different steel surrogate value from the one it used in CPZ's new shipper review and the fourteenth administrative review to calculate the margin for this sale, and as a result, the margin for the same shipment with sales in three different periods ({CPZ's New Shipper Review, TRBs XIV,³ and the Preliminary Results}) were dramatically different." See CPZ's Case Brief at page 21. CPZ argues that, in CPZ's New Shipper Review, the steel bar surrogate value derived from Japanese exports to India was \$814/MT, in TRBs XIV it was \$789/MT, and for the current review \$1,376/MT. This, CPZ asserts, has led to inconsistent and unpredictable margins in the current review and is inherently unfair. Therefore, CPZ contends that the Department should use the surrogate value it calculated

³Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2000-2001 Administrative Review, 67 FR 72147 (December 4, 2002) (collectively, "TRBs XIV")

in CPZ's New Shipper Review to value the steel input used to manufacture the subject merchandise that entered during the POR of CPZ's New Shipper Review.

CPZ acknowledges that the Department normally calculates normal value using the best available information contemporaneous to the period of review in which the sale is made to the first unaffiliated buyer in the United States. However, CPZ counters that although the antidumping statute specifically directs how the Department calculates export price or constructed export price, it does not do the same for how the Department should calculate normal value. Moreover, CPZ argues that there is nothing in the statute directing the Department to calculate margins using surrogate values from the period in which the product is sold.

According to CPZ, in the 1992-1993 Heavy Forged Hand Tools review⁴ the Department calculated normal value using surrogate data from the period most closely corresponding to the time when the product was made. Additionally, CPZ argues that the court has instructed the Department to use a methodology that would account for the time that merchandise was held in warehouse.⁵ According to CPZ, in Thai Pineapple the Federal Circuit Court found that the Department is required to “. . . match sales of goods to costs on the period in which those goods were manufactured, taking into account the inventory period.” See CPZ's Case Brief at page 23 citing Thai Pineapple 273 F.3d at 1085. As the surrogate value calculated in the current review is “dramatically” higher than in CPZ's New Shipper Review, CPZ contends that there was a “dramatic increase” in the cost of the steel input used to manufacture the subject merchandise from the time it was produced to the time it was sold, which parallels the situation in Thai Pineapple.

In conclusion, CPZ notes that the Department, although it has an option, usually examines sales made during a review period based on date of sale over date of entry. This, CPZ argues, created a situation where one entry, which resulted in sales during three separate review periods, will be assessed duties at three separate rates. Therefore, CPZ suggests that the Department assess dumping duties for the entire shipment as one entry at the rate determined for CPZ in CPZ's New Shipper Review. If the Department does this, according to CPZ, CPZ will receive an overall dumping margin of zero as the remaining entries that were not part of that original shipment were found in the Preliminary Results to have a zero dumping margin.

Petitioner's Argument: The petitioner disagrees with CPZ's contention that because one of CPZ's shipments to the United States resulted in sales within three different administrative review periods the Department should not analyze those sales on the basis of three different

⁴Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 60 FR 49251 (September 22, 1995) (“Heavy Forged Hand Tools”).

⁵Thai Pineapple Canning Industry Corp. v. United States, 273 F.3d 1077 (Fed. Cir. 2001) (“Thai Pineapple”).

normal values - one relevant for each period. The petitioner argues that CPZ, in proposing that the Department use the surrogate value from CPZ's New Shipper Review to value the steel input for cups and cones in the current review, is offering new evidence in conjunction with its argument.

The petitioner contends that the Department's task is to determine an appropriate cost of production for CPZ's goods using surrogate values from the current POR and not an historical period of review. According to the petitioner, the surrogate country's costs have not been frozen in time and the Department should use a current normal value to compare with current U.S. prices for purposes of determining the current level of dumping. The petitioner further notes that it is too late for CPZ to submit additional data on the record. The petitioner argues that regulations prescribe deadlines for submitting factual information and that last minute references to data not on the record undermine the normal procedure.

Accordingly, the petitioner states that the Department should reject CPZ's position and continue to use updated "normal value" information and not allow late evidence.

Department's Position: We disagree with CPZ's contention that the Department should use surrogate values calculated in CPZ's New Shipper Review. Instead, to calculate normal value for CPZ, we have continued to rely on surrogate values that are contemporaneous with the POR. It is Department practice to calculate normal value in nonmarket economy cases by valuing the nonmarket economy manufacturers' factors of production using data that is contemporaneous with the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057, 14062 (March 29, 1996). This is also consistent with Department practice in calculating constructed value in market economy cases. To calculate constructed value, we prefer to capture costs from within the period of investigation ("POI") or POR. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany, 67 FR 3159 (January 23, 2002) and accompanying decision memorandum at Comment 13.

Therefore, we do not agree with the decision in Heavy Forged Hand Tools to use public data contemporaneous with the time of production rather than with the POR to value the merchandise produced prior to the POR, and do not believe that Heavy Forged Hand Tools reflects the Department's current practice. Additionally, we note that Thai Pineapple is an isolated, fact-specific case that only affected the first antidumping administrative review of canned pineapple fruit from Thailand. In all administrative reviews of canned pineapple fruit from Thailand since the first one, the Department has continued its normal practice of calculating constructed value using the cost of manufacturing from within the period of review. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 65247 (November 19, 2003).

Moreover, we disagree with CPZ's contention that the one entry of TRBs in question will be assessed antidumping duties at three different rates.⁶ Specifically, when the Department instructs U.S. Customs and Border Protection ("CBP") to liquidate imports after a review is completed, the instructions apply the rate determined in the review to the entries covered by that review. Thus, the Department's findings in the current review will have no impact on the duty levied on the subject merchandise that entered in the period covered by CPZ's New Shipper Review. The purpose of the current review is to determine the level of dumping during the period under review, June 1, 2001 through May 31, 2002. Accordingly, subject merchandise that entered during the current POR will be assessed the appropriate duty rate based on sales by CPZ during the POR, and entries during the period covered by the new shipper review were assessed at the duty rate established by the Department in CPZ's New Shipper Review.

Comment 3: Cups and Cones Surrogate Value: Japanese Exports to India Versus to Indonesia

Respondent's Argument: CPZ disagrees with the benchmark range used by the Department in the Preliminary Results to evaluate potential surrogate steel values. CPZ further disputes the Department's decision to use Japanese export prices to India data to value steel bar. Rather, CPZ argues the Department should have used Japanese export prices to Indonesia.

CPZ argues that, in the past, the Department calculated the U.S. benchmark price range by looking at prices from countries with the most significant volume of sales to the United States. In this review, however, CPZ claims the Department incorrectly included in the range of prices used to formulate the U.S. benchmark insignificant quantities of steel imported from France that were sold at aberrationally high prices. CPZ asserts that these values skewed the benchmark range. CPZ argues that, if the Department were to use \$614/MT, the average price of all U.S. imports of this type of steel as the benchmark price, the average price of these French imports, \$1,260/MT, would be considered aberrational and this value would be excluded. Similarly, CPZ claims that the total value of French imports for an entire year measured less than \$20,000/month which, CPZ claims, is an insignificant amount when compared to the total value of U.S. imports of this steel. In addition, CPZ claims the Department justified excluding certain countries from the benchmark range on the grounds that imports measuring less than one percent of total imports were insignificant. CPZ argues the Department cannot "logically" justify including French imports in the benchmark range when they amounted to a little over one percent, while excluding other countries measuring less than one percent by saying that one percent is significant while less than one percent is not.

Moreover, CPZ claims that evidence it submitted to the Department illustrates that the average prices of French imports for October 2001, March 2002, and May 2002, were exceedingly high due to the "minuscule" quantities of these shipments. CPZ, on the other hand, notes that the only month within the POR in which French imports into the United States numbered greater than 100

⁶We note that CPZ did not participate in TRBs XIV.

MT was July 2001, and the average price of the steel for that shipment was \$603/MT. CPZ notes that the similarity between this price and the average price of all imports into the United States of \$614/MT is evidence that the French import data was unreliable and that all, or at least the aberrational months, should be excluded from the benchmark range calculation.

CPZ also argues that the Department should not use data on Japanese exports to India to value steel bar for cups and cones. CPZ argues that, if the Department makes the changes noted above to the U.S. benchmark range, the Department must find Japanese export prices to India, valued at \$1,375.88/MT, aberrational because this value would exceed the high-point of the revised benchmark range of \$885/MT. To support this assertion, CPZ cites to evidence it submitted to the Department which indicates that the price of Japanese exports to India far exceeded that of Japanese exports to Indonesia and to the United States. Moreover, CPZ states that the data on Japanese exports to Indonesia is more reliable because the quantity of Japanese exports to Indonesia is “huge” in comparison to the quantity shipped to India. CPZ argues that the Department faced a similar set of circumstances in a recent challenge to the 1996-1997 TRBs administrative review results. In that case, CPZ states that the Department chose in its redetermination on remand to use a figure based on Japanese exports to Indonesia to value the input at issue rather than Indian import data. Moreover, CPZ claims that the price of Japanese exports to Indonesia in the current case, as in the TRBs remand decision, is almost identical to the average U.S. import price. Based on these facts, CPZ argues that the Department must find Japanese exports to Indonesia data more reliable for valuing bar steel in these Final Results.

Petitioner’s Argument: Timken argues that, in calculating the U.S. benchmark range, the Department correctly excluded imports from four countries on the grounds that the imports were of small quantities (1.7 to 45 metric tons) and high prices (\$1,811 to \$8,578). Timken argues that, in contrast to imports from these countries, French imports into the United States were ten times greater in quantity and much “closer in price per-ton to imports from the next lowest-priced country” (\$1260 versus \$885 per ton for Swedish imports). As a result, Timken argues the Department’s inclusion of French values was reasonable.

Timken also argues that the Department should reject CPZ’s suggestion that Commerce exclude certain months of French import data from the benchmark range. Timken states that, if the Department conducted a monthly analysis of all the imports from all the countries included in the benchmark range as suggested, the potential opportunities for debate by parties over what should, or should not be included, would be exhausting. However, Timken argues that, if the Department were to consider individual monthly data, the Department should also exclude months with small quantities from the United Kingdom data. The resulting new figure would not contain any aberrational elements and, therefore, could be included in the benchmark range. Moreover, Timken argues this new figure, \$1,230/MT, would be extremely close to the unadjusted French price that the Department used as the upper limit of the U.S. benchmark price range for the Preliminary Results. Therefore, Timken argues that the data on the record contradicts CPZ’s claim that the Department’s price comparisons were based on a skewed U.S. price range.

Timken makes one additional point concerning French values. Timken asserts that French values taken as a whole, despite their variation from the rest of the data, are well within the range of data upon which Commerce has based benchmark calculations in comparable situations. See Timken's rebuttal brief at page 16 citing to Final Results of New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 27961 (May 24, 1999). Timken states that, in that case, the Department accepted a range of values in which the highest value was four times greater than the lowest value in the range. Timken compares this example to the current case in which the highest range of values accepted was slightly over 1 times greater than the lowest value in the range.

Department's Position: We agree with CPZ that the French data should be excluded from the benchmark range. As stated in the Memorandum to John Brinkmann, "Selection of a Surrogate Country and Steel and Scrap Value Sources," dated February 14, 2003, the Department's practice, in selecting a surrogate for valuing cups and cones, is to compare potential surrogate values to a benchmark range consisting of a significant volume of U.S. imports of the steel input listed under U.S. Harmonized Tariff Schedule ("HTS") category 7228.30.20. In the Preliminary Results, this benchmark range included imports from Japan, Sweden, France and Spain. Within this range, imports from Japan maintained the lowest price per metric ton for the POR, \$556.82/MT, while imports from France recorded the highest price per metric ton, \$1,259.68/MT. Our examination of the price per metric ton for each of the countries comprising the benchmark range yielded the conclusion that import data pertaining to imports from Japan, Sweden, and Spain are generally consistent with the total weighted average price of U.S. imports, \$613/MT. However, the average monthly price of French imports into the United States at times deviates significantly from this average price. For example, imports from Japan comprising 83% of total U.S. imports had an average price of \$556.82/MT. Throughout the POR, the monthly price per metric ton for Japanese imports for 11 of the 12 months of the POR varied in value from \$494/MT to \$678/MT. Similarly, imports from Sweden comprising 10% of total U.S. imports have an average price of \$885/MT. The monthly price per metric ton for the POR varied between \$807/MT and \$1,096/MT. However, imports from France, comprising 1.1% of total U.S. imports with a price per metric ton of \$1,259.68/MT, varied in monthly value from \$602/MT to \$11,244/MT with two intervening months of \$9,768/MT and \$9,541/MT.

Based on this examination, we find that the price per metric ton of imports from Japan, Sweden, and Spain, comprising 95% of total U.S. imports, remains remarkably consistent with the total weighted-average value of imports, \$613/MT, while French import data varied significantly from the total weighted-average value of imports. Therefore, we have determined that French data is aberrational and should be excluded from the benchmark range.

In light of the revision to the U.S. benchmark range, we reexamined all of the information on the record, which included Indian import data, Japanese exports to India data, Indonesian import data, and Japanese exports to Indonesia data. We first looked at the Indian data. As we have found in the past (e.g., TRBs XII), we were unable to isolate bearing quality steel in Indian

import category 7228.30 because none of the eight digit sub-categories within 7228.30 specifically include bearing quality steel bar. Only the “Others” category, 7228.3019, could contain the type of bearing quality steel used in the production of cups and cones. Thus, we used 7228.3019 and calculated an Indian surrogate value of \$1,309.24./MT. In comparing the data from 7228.3019 to the range of prices found within U.S. import category 7228.30.20, we found the Indian values to be an unreliable indicator of the value of bearing quality steel used for the production of cups and cones because they are significantly higher than any price within the U.S. import range. Therefore, we continue to find that Indian import prices from category 7228.3019 are unreliable.

As we have noted in the past, the Japanese export statistics provide a breakdown of the broad six digit 7228.30 category into several more narrowly defined sub-categories. Japanese category 7228.30.900, “Bars and Rods, of Other Alloy Steel,” is a category that would include the type of bearing quality steel bar that would be used to manufacture cups and cones. We determined that the average value of Japanese exports to India is \$1,375.88/MT. For the Final Results, we find that this figure is significantly higher than the U.S. benchmark range and, therefore, is an unreliable indicator of the value of bearing quality steel used for the production of cups and cones.

Since data from the primary surrogate country, India, was not a reliable indicator of the value of steel used in the production of cups and cones, we next examined the Indonesian import data from HS category 7228.30 and Japanese exports to Indonesia data from HS category 7228.30.900. Based on this examination, we find the Indonesian HS import category, like the Indian import HS number, to be a basket category that encompasses a broad range of hot-rolled bars and rods of alloy steel, in addition to the bearing quality steel bars and rods used in TRB cup and cone production. See Department’s redetermination pursuant to the CIT’s remand in Timken Company v. United States, No. 98-12-03235, slip op. 02-38 (CIT Apr. 22, 2002) (“TRBs X Remand Redetermination”).⁷ As for Japanese export statistics, as explained above, we find that the Japanese data provides a more narrowly defined HS category that would include the type of bearing quality steel bar used to manufacture TRB cups and cones. See Final FOP Memo.⁸ Therefore, we find the Indonesian import data, as a basket HS category, to be less reliable in comparison to the more narrowly defined Japanese export data (HS number 7228.30.900). See TRBs XI⁹ at page 61840.

⁷The TRBs X Remand Redetermination was upheld by the CIT on September 3, 2002. See Timken Company v. United States, No. 98-12-03235, slip op. 02-104 (CIT Sept. 3, 2002).

⁸Memorandum to Susan Kuhbach, “Factors of Production Values Used for the Final Results,” dated December 11, 2003 (“Final FOP Memo”).

⁹Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (November 15, 1999)

In comparing the Japanese exports to Indonesia data to the revised U.S. benchmark range (\$556.82/MT to \$885.28/MT), we find that the average Japanese exports to Indonesia value, \$575.28/MT, provides a reasonable measure for this input. Because the Japanese tariff category is the narrowest category that could contain bearing quality steel, and because it is consistent with values contained in our U.S. benchmark category, we believe that this data is reliable for valuing steel used in the production of cups and cones.

Therefore, for the purposes of these Final Results, we are using Japanese exports to Indonesia data to value the steel used to produce cups and cones.

Comment 4: Correct the Surrogate Value Calculated Using Japanese Exports to India

Respondent's Argument: CPZ claims the Department made a clerical error in its calculation of the surrogate value calculated for cups and cones. CPZ claims the correct figure should be \$1,187/MT and not \$1,963/MT as calculated by the Department. Therefore, CPZ argues, in the event that the Department refuses to use either the actual market economy prices CPZ paid for the steel, the surrogate value calculated in CPZ's New Shipper Review, or the Japanese export prices to Indonesia and continues to use Japanese exports to India, the Department should revise the figure to reflect the "true surrogate value" derived from using Japanese exports to India. CPZ claims the Department should consider this value for Japanese exports to India.

Petitioner's Argument: With regard to CPZ's argument that the Department made a clerical error in its calculation using Japanese exports to India to value steel bars, Timken argues that CPZ is "apparently" referring to data not used by the Department in calculating Indian import data. The petitioner states that the Department correctly used the average value for all Japanese exports to India of goods listed under the HTS category 7228.30.900 of \$1,375.80. Accordingly, Timken argues the Department should continue to use the value it has chosen as its surrogate value for steel bar.

Department's Position: We agree with the petitioner. The Department used Japanese exports to India data, *i.e.*, \$1,375.80/MT, to value CPZ's steel input for cups and cones for the Preliminary Results. The figure CPZ cited as incorrect, \$1,963/MT, is actually the weighted average price the Department calculated using Indian import data of goods from Indian HS category 7228.30.19, not from Japanese export to India data. Furthermore, in the Preliminary Results, the Department did not use the Indian import figure (*i.e.*, \$1,963/MT) to value steel bar; nor have we used Japanese exports to India for these final results. See Comment 3 above for more discussion on the surrogate value the Department chose for calculating CPZ's normal value for these final results.

Comment 5: Financial Ratios: Add HMT's Financial Records and a Simple Average

Respondent's Argument: In the Preliminary Results the Department used the financial data of TRBs producers in India to derive the financial ratios used in the Department's calculation of normal value. CPZ claims to have submitted information on an additional Indian producer of TRBs, HMT, as part of its 20-day factual submission and that the Department should include this company's data in its calculation of the financial ratios. Moreover, CPZ argues the Department should use a simple average of these ratios in its normal value calculation.

Petitioner's Argument: The petitioner disagrees with CPZ's argument that the Department should use a simple average of the financial ratios calculated from the various Indian producers for application in this review. The petitioner argues that the Department should continue to use the weight-averaged figures as it has in previous TRBs reviews. According to the petitioner, the approach advocated by CPZ in which the Department would use a simple average would, in effect, give small producers equal weight with larger producers in the calculations, and would have an aberrational impact on the final financial ratios.

As no statute or regulation prescribes a particular method for calculating these financial ratios, the petitioner states that the Department may exercise discretion within the framework of its basic obligation to calculate margins as accurately as it can. According to the petitioner, the Department has done this in the Preliminary Results and has no reason to alter this methodology.

Department's Position: We agree with the respondent. Although we used a weighted average of the reported costs of Indian producers of like or similar merchandise to calculate the selling, general, and administrative ("SG&A"), overhead, and profit ratios in the Preliminary Results and previous administrative reviews, we are revising this practice in accordance with the Department's final results of redetermination pursuant to the remand order in Rhodia, Inc. v. United States, Slip. Op. 01-138 (CIT Nov. 30, 2001). Thus, for these final results, we used a simple average to calculate the overhead, SG&A, and profit ratios.

Comment 6: Discontinue Excluding Negative Dumping Margins

Respondent's Argument: CPZ argues that the Department used a "zeroing" methodology in this review to calculate dumping margins that contradicts the antidumping statute and World Trade Organization ("WTO") rules. In addition, CPZ argues that this methodology artificially creates, or inflates, dumping margins, which also contradicts statutory requirements to calculate margins as accurately as possible.

CPZ contends that section 771(35)(A) of the Tariff Act of 1930, as amended ("the Act"), defines dumping margin as the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise. Similarly, section 771(35)(B) of the Act defines weighted-average dumping margin as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate

export prices and constructed export prices of such exporter or producer. However, CPZ states that the Department incorrectly asserted in its “Issues and Decision Memorandum” accompanying the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 50408 (October 3, 2001) (“Hot-Rolled from the Netherlands”), at Comment 1 that “these sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales.” CPZ claims the Department inappropriately inserted the word “individual” where “it does not exist.” In doing so, CPZ claims the Department ignored the “express statutory mandate from Congress that margin calculations be made in the aggregate.”

Furthermore, CPZ asserts that this zeroing methodology contradicts WTO rules. CPZ argues this methodology violates Article 2 of the WTO Antidumping Agreement in that it is used to adjust the negative margin on an individual sale to zero before calculation of the final weighted average margin. The WTO rules dictate that a “fair comparison be made between home market and U.S. prices when calculating margins.” See CPZ case brief at page 36. CPZ claims the zeroing methodology violates this stipulation. In support of this position, CPZ cites to two cases where the WTO Panel and the Appellate Body found that the zeroing methodology violates Article 2.4.2 of the Antidumping Agreement because all transactions and all models or types of the product under investigation should be compared to the weighted average normal value.¹⁰ CPZ asserts that, although the United States was not a party to these “administrative determinations,” as a WTO member, the United States should “respect the decisions of the WTO panels and the Appellate Body as they pertain to U.S. trade practices.” See CPZ case brief at page 16.

CPZ argues the Department’s application of the zeroing methodology in this case mirrors the application of the zeroing methodology in the cases cited above. CPZ argues that, because the WTO rejected this methodology in past cases, the Department should accept this decision and discontinue its application of the zeroing methodology in this case. Echoing this point, CPZ stated that the Appellate Body, in its adjudication of the administrative determinations, asserted that the Bed Linen zeroing precedent is applicable to U.S. law practices. CPZ also argues that Congress unambiguously expressed a desire to bring U.S. law fully into compliance with the Antidumping Agreement in crafting the URAA. Similarly, CPZ states that the CIT asserted that this practice creates “inflated margins and is incapable of producing a fair result.” See Bowe Passat Reinigungs-und Washereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT, 1996).

¹⁰See European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, para. 6.116 (October 30, 2000) (Panel Discussion); WT/DS141/AB/R (March 1, 2001) (Appellate Body Decision)(“Bed Linen”). European Communities-Anti-Dumping Duties on Malleable Case Iron Tube or Pipe Fittings from Brazil, WT/DS219/R, 7 March 2003 (Panel Discussion).

In addition, CPZ states that “nothing in the statute requires Commerce to use a zeroing methodology but rather {the statute} requires Commerce to use a ‘fair comparison’ between normal value and export price or constructed export price.” CPZ’s case brief at page 38. Therefore, CPZ argues, zeroing is not an express statutory creation of U.S. law that would hold precedence over WTO rules and, thus, should be eliminated.

Lastly, CPZ states that the Department’s zeroing practice does not result in the calculation of accurate margins. CPZ asserts that, by zeroing sales made above normal value, the Department, in effect, gives no weight to negative dumping margins on certain sales. Therefore, CPZ concludes, “the Department’s calculation is not a true average of the difference between normal value and export price or constructed export price, and this is plainly contrary to the purpose of the antidumping statute.” See CPZ’s case brief at page 39. CPZ asserts that, if the Department were to include these margins, rather than zero them in the aggregate calculations, CPZ’s margins would be lowered.

Petitioner’s Argument: With regard to CPZ’s argument that the Department should offset dumping margins found on some sales by the extent to which U.S. prices exceed normal value on fairly-traded sales, Timken argues the CIT considered the same argument in The Timken Company v. United States, slip op. 02-106 at 30-32 (CIT Sept. 5, 2002) and sustained the Department’s practice of converting all negative dumping margins to zero in the final margin calculations. Timken argues the court in that case concluded that the Department has no obligation to conform its law to the decision of the WTO Appellate Body in Bed Linen proceeding. Timken claims the decision of the CIT was directed at the European Community, not the United States, and asserted that dispute settlement create obligations only for the “member concerned.” See Timken’s rebuttal brief at page 18.

In addition, Timken argues that CPZ failed to recognize that the Uruguay Round Agreements Act does not permit the Department to modify a practice allegedly inconsistent with a WTO decision until a number of specific conditions are fulfilled. See Timken’s rebuttal brief at page 18-19. Timken claims these conditions, which include “Congressional consultation and the consideration of public and private sector views,” have not been met in the current case. Therefore, CPZ is, in effect, asking the Department to “disregard U.S. law” by modifying a practice without pursuing the necessary prerequisite conditions. See Timken’s rebuttal brief at page 19.

Furthermore, Timken asserts that the CIT has deemed the Department’s treatment of negative margins as reasonable in stating “the practice of considering negative margins as zero ensures that sales made at less than fair value on a portion of a company’s product line to the United States market are not negated by more profitable sales.” See Timken’s rebuttal brief at page 19. Therefore, “Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales.” Id. at page 19.

Department's Position: The Department rejects CPZ's argument that the Department should not set "negative margins" to zero in calculating dumping margins.

Additionally, as we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2003) and Hot-Rolled from the Netherlands, and accompanying Issues and Decision Memorandum, at Comment 1. First, sales that did not fall below normal value are included in the weighted-average margin calculation as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow sales that did not fall below normal value to cancel out dumping found on other sales.

Second, the Act requires that the Department employ this methodology. Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." Contrary to CPZ's assertion, we believe that these sections, taken together, do direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales that did not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the review, because the value of such sales is included in the denominator of the dumping rate, while no dumping amount for "non-dumped" merchandise is included in the numerator. Thus, a greater amount of "non-dumped" merchandise results in a lower weighted-average margin.

This is, furthermore, a reasonable means of establishing duty deposits in investigations, and assessing duties in reviews. In an investigation, the deposit rate calculated must reflect the fact that CBP is not in a position to know which entries of merchandise entered after the imposition of a dumping order are dumped and which are not. By spreading the estimated liability for dumped sales across all investigated sales, the weighted-average dumping margin allows CBP to apply this rate to all merchandise entered after an order goes into effect.

Furthermore, the above-described methodology has been upheld by the CIT (see Corus Staal BV v. United States, 259 F. Supp. 2d 1253 CIT LEXIS 18, at 25 (CIT 2003) ("Corus Staal"). In

Corus Staal the CIT state that it cannot find that zeroing the Department's treatment of sales made above normal value is an unreasonable application of the statute as it is presently written. See Corus Staal at 25.

Finally, the CIT specifically addressed Bed Linen in Corus Staal, stating "that Bed Linen cannot be the basis for striking the Department's methodology. As this court has frequently recognized, WTO decisions are not binding upon {the Department} or the court." See Corus Staal at 25.

Comment 7: Amelioration of the Anomalous Situation Arising from the Petitioner Owning 100% of Yantai Timken

CPZ's Argument: CPZ argues that the Department should make an adjustment in this case to ameliorate the situation arising from the fact that Timken is the 100% owner of the respondent, Yantai Timken. CPZ argues that, as such, Timken will both pay any antidumping duties assessed against Yantai Timken's exports of TRBs to the United States and will also receive any antidumping duties collected under the Byrd Amendment. CPZ states that this would include antidumping duties collected from Yantai Timken or any other respondent, including CPZ. CPZ claims that Timken can, in effect, subsidize Yantai Timken by feeding any antidumping duties assessed as part of this proceeding back into Yantai Timken. CPZ claims that, even though Timken may certify that none of the monies will be used to support its wholly-owned PRC producer of TRBs, such a certification would be meaningless because money is fungible. CPZ asserts that, if Timken is allowed to subsidize Yantai Timken with monies collected on any antidumping duties assessed against Yantai Timken and any other TRBs respondent, Yantai Timken will have gained an unfair trade advantage. See CPZ's case brief at page 40.

Yantai Timken's Argument: With regard to the future possibility of an importer earning money from the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"), Yantai Timken argues that there are no statutory provisions that require or authorize the Department to consider future distributions in its determination of dumping. Yantai Timken is unsure what CPZ wishes the Department to do for the purposes of this review. Yantai Timken argues that any possible distribution of potential antidumping duties, regardless of their punitive merits in the current proceeding, are in the future and, thus, cannot be addressed in the current proceeding. Moreover, Yantai Timken claims that domestic producers have owned foreign subsidiaries for "many, many years." See Yantai Timken's rebuttal brief at page 1. Therefore, it is not accurate to say that Congress could not have foreseen the possibility of subsidization raised by CPZ at the time it enacted the Continued Dumping and Subsidy Offset Act into law. Furthermore, Yantai Timken argues that there are no statutory provisions that require or authorize the Department to modify its determination of dumping to account for the future possibilities that CPZ describes. Yantai Timken asserts that the Department should continue to administer the antidumping duty law as proscribed by law.

Department's Position: We agree with Yantai Timken. There are no statutory provisions that authorize the Department to take action in current antidumping proceedings to rectify any unintended future benefit or detriment to either party resulting from the CDSOA.

Comment 8: Yantai Timken Reported Steel Values Clerical Error

Respondent's Argument: Yantai Timken argues that in its normal value calculations for the Preliminary Results, the Department incorrectly applied the market economy prices reported by Yantai Timken for cup and cone steel and roller steel. Yantai Timken states that the Department should use the correct values supported by the record in the calculations for the final results so that the proper value is applied to each type of steel.

Department's Position: The Department agrees with Yantai Timken and has revised the margin program accordingly.

Comment 9: Yantai Timken Packing Values Clerical Error

Respondent's Argument: In response to a request by the Department, Yantai Timken submitted a revised database which separately listed packing materials and packing labor for each of the inputs used in the production process. Included in this database was an allocation of packing costs to each of the appropriate constituent elements making up one of the inputs assembled in production. Yantai Timken argues that in converting this submitted data into a SAS database the Department incorrectly converted one of the packing materials.

Yantai Timken argues that there is adequate evidence supporting the fact that this converted value was incorrect. Foremost among them is the fact that the correct figure listed for this packing material in the hard-copy printout of the electronic database submitted as part of Yantai Timken's response differs from that in the converted electronic database. Also, Yantai Timken originally submitted total weight figures for one of the inputs. When values are re-allocated as noted above, the value appropriated to that input after all the other values are assigned accordingly to their constituent parts matches the value in the hard-copy version of the database. Yantai Timken also states that the amount of packing material used for all of the other parts exported by Yantai Timken were in an order of magnitude much smaller than the figure used in the calculation of the Preliminary Results. Finally, Yantai Timken states that the figure used for the packing material in the calculation of the Preliminary Results measures almost as great as the weight of the input for this part. Therefore, Yantai Timken claims the Department should correct this error by either correcting the database or including new language in the SAS program used for the Final Results.

Department's Response: The Department agrees and has made the appropriate changes to the margin program.

Comment 10: Yantai Timken Part-Specific Costs

Respondent's Argument: Yantai Timken contends that the Department incorrectly averaged the prices reported for each finished TRB component that Yantai Timken purchased from a market economy country. Yantai Timken argues that the Department should use the specific market economy price paid for each model, rather than calculating an average price, for the final results. Due to the proprietary nature of the Yantai Timken's comments, however, we cannot provide in this public memorandum a complete summary of Yantai Timken's arguments.

Department's Position: The Department has determined that it will not use the market economy prices Yantai Timken paid for this particular component in the calculation of normal value for the final results. The Department is rejecting these prices because there is a reason to believe or suspect that they are distorted by subsidies maintained in the market economy country in question. Instead, the Department relied on United Kingdom exports to India data to value the input in question. Due to the proprietary nature of this information, for further explanation see the Memorandum from Case Analyst to File, "Final Results Calculation Memorandum for Yantai Timken Company, Ltd.," December 11, 2003.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

Date